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No. 46

In the Supreme Court of the United States

OCTOBER TERM, 1948

NATIONAL LABOR RELATIONS BOARD, PETTTIONER

v.

STOWE SPINNING COMPANY, ACME SPINNING COMPANY, PERFECTION SPINNING COMPANY AND LINFORD MILLS, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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I

RESPONDENTS' OBJECTION TO THE BOARD'S FINDING THAT BY REFUSING TO PERMIT THE EMPLOYEES OF STOWE TO MEET IN THE P. O. S. OF A. HALL RESPONDENTS ACME, PERFECTION AND LINFORD, AS WELL AS STOWE, VIOLATED SECTION 8 (1) OF THE ACT IS NOT PROPERLY PRESENTED AND IS WITHOUT MERIT.

Respondents contend that since only employees of Stowe Spinning Company were scheduled to meet in the P. O. S. of A. hall, interference with their meeting by the Acme, Perfection and Lin-

ford companies may not be deemed violative of the Act, because allegedly, these respondents "owe no duty under the Act" to employees of Stowe Spinning Company (Br., p. 6). This objection was never urged before the Board and may not properly be presented to this Court.

Section 10 (e) of the Act provides that "No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances." No excuse is offered for this failure.

In its complaint initiating proceedings in the instant case (par. XII), the Board alleged that Stowe Spinning Company, "in conjunction with Acme Spinning Company, Perfection Spinning Company and Linford Mills, Inc., who were jointly and severally acting directly or indirectly in the interest of Stowe Spinning Company" interfered with the exercise of rights guaranteed to employees of Stowe Spinning Company under the Act by prohibiting their scheduled use of the P. O. S. of A. hall for a union meeting.[1] In paragraph XVIII of the complaint the Board alleged that the four respondents did "jointly and severally" thereby "interfere with, restrain and coerce and are interfering with, restraining and coercing

[1] Section 2 (2) of the Act defines "employer" to include "any person acting in the interest of an employer, directly or indirectly."

their employees in the exercise of the rights guaranteed in Section 7 of the Act," in violation of Section 8 (1). In their answers respondents merely denied generally that unfair labor practices had been committed by the denial of use of the hall, and did not specifically object to the allegations that in effecting the denial the Acme, Perfection and Linford companies were acting "directly or indirectly in the interest of Stowe Spinning Company" and that they thereby interfered with the statutory rights of "their employees."

In the intermediate report the trial examiner found, as Board counsel had contended at the hearing (Tr. 423), that all four respondents were accountable under the Act for the conduct of D. P. Stowe, as their agent, in compelling the P. O. S. of A. to revoke the permission previously granted the Union to hold the scheduled meeting in the hall (I. R., p. 6, line 46, p. 7, line 47, p. 13, line 12). The trial examiner recommended that all four companies be ordered to cease and desist from "refusing to permit the use of the Patriotic Order Sons of America hall by their employees for self-organization" (I. R., p. 16, lines 18–19). In the statement of exceptions filed jointly by respondents to the intermediate report, respondents excepted only to the trial examiner's findings:

> (1) That Stowe's refusal, on behalf of all four respondents, to permit use of the

P. O. S. of A. hall for purposes of self organization in a labor union constituted disparity of treatment (I. R., p. 6, line 45 *et seq.*).

(2) That the sole design of Stowe's action for which all respondents are accountable, was to impede, prevent and discourage self-organization and collective bargaining by the employees at the North Belmont Mills (I. R., p. 7), line 4, *et seq.*).

(3) That by Stowe's discriminatory refusal to permit use of the P. O. S. of A. hall for the union meeting scheduled for January 28, 1945, the Respondents have interfered with, restrained and coerced their employees in the exercise of rights guaranteed in Section 7 of the Act (I. R., p. 7, line 53 *et seq.*)

Respondents also excepted to the trial examiner's conclusion of law that "by interfering with, restraining and coercing their employees in the exercise of rights guaranteed in Section 7 of the Act, the respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act" (Conclusions of Law 4, 5, page 15). Respondents did not except to the trial examiner's finding that all four respondents were accountable for the conduct of D. P. Stowe, as their agent, nor, apart from their contention that the denial of use of the hall was not an unfair labor practice, and that no order was therefore warranted, did they object to the trial examiner's recommenda-

tion that the Acme, Perfection, and Linford companies, as well as Stowe Spinning Company, be ordered to cease and desist from the unfair labor practices which they were found to have committed. In the brief filed by respondents in support of the exceptions, respondents nowhere suggested that the Acme, Perfection and Linford companies were less responsible under the Act for the denial of the hall than was Stowe, or that if the order against Stowe was valid, it should not extend to the other companies. Having failed to object to the trial examiner's findings and recommendations, respondents are precluded from now urging before this Court that the Board erred in adopting these findings and recommendations. *National Labor Relations Board* v. *Cheney Lumber Co.*, 327 U. S. 385, 388–389; *Marshall Field & Co.* v. *National Labor Relations Board*, 318 U. S. 253; *May Department Stores Co.* v. *National Labor Relations Board*, 326 U. S. 376, 386, n. 5.

In any event, the contention is without merit. In joining with Stowe Spinning Company to deprive its employees of opportunity to conduct organizational meetings, the three affiliated companies were clearly acting as "employers" in relation to those employees within the meaning of Section 2 (2) of the Act. *Butler Bros.* v. *Na-*

The four companies own the building in which the P. O. S. of A. hall is located as tenants in common (R. 5; 37). D. P. Stowe, who controls the property as agent for the com-

tional Labor Relations Board, 134 F. 2d 981, 984–985, certiorari denied, 320 U. S. 789; *National Labor Relations Board* v. *Condenser Corp.*, 128 F. 2d 67, 71–72 (C. C. A. 3); *National Labor Relations Board* v. *Taylor-Colquitt Co.*, 140 F. 2d 92, 93 (C. C. A. 4). Moreover, the Board in its decision found (R. 12, n. 19) that in view of the closely-knit nature of the community, knowledge of respondents' action with respect to the hall "was shared by employees of the other respondents as well. The refusal served not only as a deterrent to

panies (R. 5; 100), is Secretary-Treasurer of respondent Perfection, Vice-President of respondent Acme (R. 5; 30), and a stockholder in all four companies (R. 30–31). The officers of Stowe Spinning Company, C. T. Stowe, President, C. P. Stowe, Vice-President, and R. L. Stowe, Secretary-Treasurer, are all cousins of D. P. Stowe (R. 5, 31). A. C. Lineberger is President of respondents Perfection, Acme, and Linford; J. Harold Lineberger is Vice-President of respondents Perfection and Linford (R. 4; 30–31). Cf. Davidson's Textile Blue Book (79th year, July, 1944), pp. 237–238. Ratchford, Benjamin U., *Economic Aspects on the Gastonia Situation*, Social Forces, Vol. 8, No. 3, March, 1930, pp. 359, 366.

In an attempt to refute the evidence showing that employee John R. Hall was discharged by respondent Stowe Spinning Company for union activities, counsel for the company introduced evidence that after his discharge, Hall was employed by Climax Spinning Company, at Belmont, North Carolina, "a mill owned or partly owned by the same interests" (Tr. 259–260, 307). In arguing for the admissibility of this evidence Mr. Mason, counsel for Acme Spinning Company, pointed out that "in some instances Mr. Lineberger runs one mill, and Mr. Stowe another, and the idea of this examination here is to show that Mr. Hall went to work * * * thereafter at a Stowe-Lineberger mill" (Tr. 259).

self-organization among the respondent Stowe's employees, but also to such organization among employees of the other respondents." (See also, R. 140.) On the basis of the Board's findings that the four respondents acted in concert through a single agent to deny the use of the hall as a means of frustrating the attempted exercise of self-organizational rights by employees of Stowe Spinning Company, it was reasonable for the Board to infer that, unless restrained, the respondents would likewise deny the use of the hall to employees of the Acme, Perfection and Linford companies, if they sought to use the hall for organizational purposes. The Board, therefore, included in its order (R. 22), a provision requiring the respondents to refrain from refusing to permit the use of the hall "by employees of any of the respondents' mills, including the employees of the respondent Stowe Spinning Company, * * * for the purposes of self-organization or collective bargaining."

II

RESPONDENTS' OBJECTION THAT THE BOARD'S ORDER WOULD REQUIRE RESPONDENTS TO MAINTAIN THE HALL FOR ALL TIME FOR UNION PURPOSES IS WITHOUT SUBSTANCE

Respondents object to the scope of the Board's order, contending that, literally read, the order would preclude respondents from devoting the space now occupied by the hall to other purposes

or from leasing or selling the hall (Br., pp. 12–13).

This contention is without merit. Even "literally interpreted" the order does not import the consequences which respondents impute to it.[3] Certainly the order does not forbid respondents to sell or to lease the P. O. S. of A. hall to others. Indeed, the provision of the Board's order relating to "successors or assigns" (R. 22), contemplates the possibility that respondents may do so.[4] It is also clear from the face of the order that it does not prohibit respondents from using the hall for other purposes, provided the Union is given a reasonable opportunity to have access to it. It is also clear that the order, viewed in the light of the circumstances and conditions which gave rise to it, does not preclude respondents from imposing reasonable and non-discriminatory conditions upon

[3] The order requires respondents to cease and desist from "refusing to permit the use of the Patriotic Order Sons of America hall by its employees or employees of Acme Spinning Company, Perfection Spinning Company, or Linford Mills, Inc., or by Textile Workers Union of America, C. I. O., or any other labor organization for the purpose of self-organization or collective bargaining."

The order requires respondents to take the following affirmative action: "Upon request, grant to its employees and employees of Acme Spinning Company, Perfection Spinning Company, or Linford Mills, Inc., and to Textile Workers of America, C. I. O., or any other labor organization, the use of the Patriotic Order Sons of America hall for the purpose of self-organization or collective bargaining" (R. 21–23).

[4] The extent to which this provision is effective to bind hypothetical successors is indicated in *Regal Knitwear Co. v. National Labor Relations Board*, 324 U. S. 9.

the use of the hall for self-organizational purposes. Cf. *National Labor Relations Board* v. *Lake Superior Lumber Corp.*, 167 F. 2d 147 (C. C. A. 6).

III

RESPONDENTS' CONTENTION THAT IN REFUSING TO PERMIT THE USE OF THE HALL RESPONDENTS ACTED PURSUANT TO COURT DECISIONS IS NOT PROPERLY PRESENTED AND IS WITHOUT MERIT

Respondents now assert that in refusing to permit the P. O. S. of A. hall to be used for a union meeting respondents were following the course suggested by the decision of the Court of Appeals for the Fifth Circuit in *LeTourneau Company of Georgia* v. *National Labor Relations Board*, 143 F. 2d 67 (Br., pp. 8–9). This explanation was not offered by respondents either to the trial examiner or to the Board and may not, therefore, properly be urged before this Court.

Attempt to justify respondents' denial of access to the hall by reference to Section 8 (2) of the Act was first made not by respondents but by Board Member Gerard D. Reilly in his dissenting opinion (R. 23–24). Mr. Reilly did not even intimate that respondents had been motivated in denying access to the hall by any desire to avoid the possibility that the granting of access might be deemed unlawful assistance to the Union. Indeed, Mr. Reilly did not dissent from the Board finding (R. 12), approved by the court below (R. 140), that the sole purpose of the denial was "to impede, prevent, and discourage self-organization

and collective bargaining." Respondents' effort to picture the denial of access as an attempt to comply with obligations which they assumed to be imposed upon them by the Act is a patent afterthought.

Perusal of the opinion of the Court of Appeals for the Fifth Circuit in the *LeTourneau* case would have led respondents to conclude that denial of access under the circumstances of this case, rather than being sanctioned by the Act, was rendered unlawful by it. For the court there clearly stated that if the employer's refusal to permit distribution of union literature on the parking lots had been motivated by anti-union animus, or if the employer had denied permission to distribute union literature on his property while permitting distribution of other types of literature his conduct would have been found unlawful (143 F. 2d, at p. 68). Since respondents were motivated by anti-union animus, and, in addition, discriminated as between self-organizational meetings and others, both conditions deemed by the court to render denial of access illegal were present here.

Moreover, Board decisions issued long prior to the instant case established unequivocally that respondents would have risked no charge of violating Section 8 (2) of the Act had they refrained from interfering with the Union's use of the hall pursuant to the arrangements which had been consummated by it with the P. O. S. of A. In cases involving company towns the Board has never held that the use by even a company-domi-

nated organization of an employer-owned meeting place, absent denial of such use to other labor organizations, constituted an element of illegal support or assistance. In *Matter of Harlan Fuel Company*, 8 N. L. R. B. 25, the Board found that the employer, owner of a company town, had violated the Act by dominating and interfering with the "formation and affairs" of the Yancey Workmen Association, Inc., a labor organization established and maintained by the employer for the purpose of combating and frustrating the organizational efforts of the United Mine Workers of America, affiliated with the C. I. O. The evidence showed that the Association had been permitted by the company to hold its organizational meeting at the company-owned gymnasium at Yancey (8 N. L. R. B., at p. 34). The evidence further showed that the union "was stopped by force in its activities, had its organizers ejected from the town, and had its members discriminated against" (8 N. L. R. B., at p. 37). The Board did not find that the use of the company's gymnasium for the Association's meeting was, in itself, an element of illegal support. It found only that in the light of the company's flagrant interference with the union's organizational efforts, the conduct of the company in permitting the Association to meet "without interference" materially assisted the latter (*ibid.*). And, in *Matter of West Kentucky Coal Co.*, 10 N. L. R. B. 88, 101, enforced, 116 F. 2d 816 (C. C. A. 6), the

Board specifically held that in a company town the use of a labor organization of an employer-owned schoolhouse as a meeting place is not an element of unlawful support, even where the labor organization using the hall is found on other evidence to be dominated and supported financially by the employer.

Respondents, who were engaged in a campaign to defeat self-organization by tactics including the discharge of union adherents and eviction of union leaders from their homes (R. 12–19, 145–147) could hardly, under these circumstances, have concluded that mere non-interference with use by the Union of the only available sheltered meeting place in the community, use for which the Union offered to pay (R. 6; 79–80), would have been regarded by the Board as unlawful support of the Union.

IV

THE MEETING HALL IS AN INTEGRAL PART OF RESPONDENT'S BUSINESS OPERATIONS

Respondents pitch their contention that they were under no obligation to permit their employees to discuss unionization in the P. O. S. of A. hall upon the allegation that the hall is wholly unconnected with respondents' business operations (Br., pp. 6, 7, 16). But this contention overlooks the fact that North Belmont is a company town, the very existence of which is attrib-

utable solely to respondent's business operations.[5] Where, for economic reasons, cotton mills are located in isolated areas, as are respondents' North Belmont mills, "force of necessity compelled the employer to provide housing accommodations for the labor which he brought to his establishment."[6] Where, "as is true of most cotton-mill villages in the South, * * * housing accommodations for the working force are as necessary a feature as the mill itself,"[7] provision of housing by the employer is recognized to be "an integral part of his main business."[8] Just as business necessities require the employer in such circumstances to provide housing for employees so they require the employer to furnish "nearly all the facilities for the maintenance of his workers including * * * stores, schools and often a mill-paid deputy sheriff."[9]

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[5] The court below stated that North Belmont "is largely, if not entirely, devoted to the business operations of the respondents" (R. 138).

[6] *Housing by Employers in the United States*, U. S. Dept. of Labor, Bureau of Labor Statistics, Bull. No. 263, p. 7; McDonald, Lois, *Southern Mill Hills* (Astoria Press, N. Y., 1928), p. 24.

[7] *Housing by Employers in the United States*, *op. cit. supra*, note 6, p. 142.

[8] *Ibid.*, p. 7.

[9] Pope, Liston, *Millhands and Preachers* (Yale University Press, 1942), pp. 36, 64; Kohn, August, *The Cotton Mills of South Carolina* (S. C. Dept. of Agriculture, Commerce & Immigration, 1907), p. 66. One employer is quoted as saying "The school is part of our business." Cook, John Harrison, *A Study of the Mill Schools of North Carolina* (Teachers College, Columbia University, 1925), p. 10.

It is recognized not only that the mill village is an "adjunct to" the mill,[10] but that "the desire for efficient and uninterrupted production prompted most of the village improvements and welfare services. * * *, employers who provided superior living conditions had an advantage in the labor market."[11] Among the facilities typically provided for employees by the owners of cotton mill villages as an aspect of their labor policy are community or lodge halls.[12]

Moreover, objective observers agree that the control exercised by employers over the subjects which may be discussed in such community or lodge halls is, particularly when coupled with the employer's control over schools, stores and housing, an effective deterrent to the exercise of freedom of speech and assembly by employees who live in mill villages.[13] It has been noted that

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[10] McDonald, Lois, *op. cit., supra*, note 6, p. 25.

[11] Pope, Liston, *op. cit., supra*, note 9, p. 19.

[12] Kohn, August, *op. cit., supra*, note 9, pp. 130, 150; Herring, Harriet L., *The Southern Mill System Faces a New Issue*, Social Forces, Vol. VIII, No. 3, March, 1930, pp. 350, 354; Herring, Harriet L., *Welfare Work in Mill Villages, The Story of Extra-Mill Activities in North Carolina* (University of North Carolina Press, 1929), pp. 129, 147; Pope, Liston, *op. cit., supra*, note 9, pp. 152, 155, 225, 238, 325; McDonald, Lois, *op. cit.*, supra, note 6, pp. 24, 36–37, 66.

[13] McDonald, Lois, *op. cit., supra*, note 6, pp. 24, 25, 31, 32; Pope, Liston, *op. cit., supra*, note 9, pp. 63–64; Cook, John Harrison, *A Study of the Mill Schools of North Carolina* (Teacher's College, Columbia University, 1925), pp. 8–10; Herring, Harriet L., *Welfare Work in Mill Villages, The Story of Extra-Mill Activities in North Carolina* (Univer-

group discussion by such employees of subjects which the employer does not approve is virtually impossible because "There is no place for meetings to discuss topics under ban." [14]

Obtaining of a meeting hall is recognized to be indispensable to the exercise of workers in mill villages of their rights to self-organization and collective bargaining.[15] Denial by employers of permission to use available meeting halls for purposes of self-organization is an effective method of precluding the exercise of self-organizational rights in such mill villages altogether.[16]

In 1939 the Textile Workers Organizing Committee reported to the Annual Convention of the Union concerning the efforts of employees to exercise their rights under the Act that "In mill-owned villages it is practically impossible to hold union meetings, and often the towns adjacent to these villages are so dominated by

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sity of North Carolina Press, 1929), p. 318; Herring, Harriet L., *The Southern Mill System Faces a New Issue*, Social Forces, Vol. VIII, No. 3, March, 1930, pp. 350, 353–354; Blanshard Paul, *The Southern Mill Village*, in Proceedings of the National Conference of Social Work, Fifty-Fifth Annual Session, 1928 (University of Chicago Press), pp. 276–281.

[14] Cook, *op. cit.*, *supra*, note 13, p. 10.

[15] Mitchell, George Sinclair, and Mitchell, Broadus, "The Plight of Cotton Mill Labor", in *American Labor Dynamics*, J. S. B. Hardman, Ed. (Harcourt, Brace & Co., 1928); McDonald, Lois, *op. cit.*, *supra*, note 6, p. 34.

[16] Blanshard, Paul, *Labor in Southern Cotton Mills* (New Republic, Inc., 1927), pp. 64–65.

the mill management that union halls cannot be secured."[17]

Erection of the hall by respondents, in their capacity as employers, in response to the expressed need of the workers for a place to meet, coupled with their denial of permission to discuss unionization in the hall, is typical of the pattern described above. D. P. Stowe testified at the hearing that erection of the meeting hall was attributable to respondents' policy of trying "to do what the help want" (R. 35). The fact that few organizations other than the P. O. S. of A. held meetings in the hall, upon which respondents premise their contention that the hall was not established "for the use of employees as such," (Br., pp. 14, 7–8), fails to support the argument. For, from the time the hall was erected until the employees became interested in the Union, there were, as Stowe himself testified, no other employee organizations in the town (R. 9; 35).

Denial of permission to discuss unionization in the hall, moreover, was designed to and did serve solely respondents' interests as employers. Like the discharge of employees for union activity and the eviction of union leaders from their

[17] *Building a Union of Textile Workers*, a Report of Two Years Progress to the Convention of the United Textile Workers Organizing Committee affiliated with the Congress of Industrial Organizations, Philadelphia, Pa., May, 1939, p. 16.

company-owned houses (R. 12–17, 145–147), denial of permission to use the meeting hall was a device utilized by respondents, as employers, to defeat the self-organizational efforts of their employees and to avoid collective bargaining (R. 12, 140).

During the hearings which preceded passage of the bill which became the Act, witnesses called to the attention of Congress the multitude of methods available to employer-owners of company towns, by virtue of their control over all property in the communities in which the employees lived, to frustrate the exercise of self-organizational rights.[18] One witness stated that in company towns "the autocracy of management possible under the rights of ownership has reduced the workers on many occasions almost to the status of industrial serfs."[19] Where, as here, the employer, as part of his business operations, exercises control over the houses in which employees live, the stores in which they shop, and the halls in which they meet, accomplishment of the objectives of the Act is impossible unless such employers are prohibited from exercising control over these properties in such fashion as

[18] Hearings on S. 2926, before the Senate Committee on Education and Labor, Part 1, March, 1934, 73d Cong., 2d Sess., pp. 137, 270, 276, 307.

[19] *Ibid.*, p. 284, statement of Arthur E. Suffern.

virtually to preclude effective exercise by their employees of the right to engage in organizational activity.

Respectfully submitted.

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NOVEMBER, 1948.